

## THE DIVISION OF EXECUTIVE POWER BETWEEN THE PRESIDENT DE LA REPUBLIQUE AND THE PREMIER MINISTRE IN FRANCE UNDER THE CONSTITUTION OF THE FIFTH FRENCH REPUBLIC

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### ABSTRACT

This article explains the development of the French government system and the division of executive power between *President de la République* and *Premier Ministre* after the change from the fourth constitution to the fifth constitution of the republic. This research applies a qualitative research methodology using a historical approach. The results of this study show that France is one of four countries implementing a mixed government system. The President and the Prime Minister, who are the executive authorities, should both lead the country. The role of the President and the Prime Minister may seem similar, but it is not the same. The President has the authority to elect the Prime Minister. Based on article 8 of the fifth constitution, the President has the right to elect and appoint the Prime Minister and terminate him/her if the concerned person declares his/her resignation from his/her government.

**KEYWORDS:** Distribution, Power, Executive, President, Prime Minister

### INTRODUCTION

The end of World War II marked the presence of fourth Republic in France and the absence of Charles de Gaulle who stood opposite the parliament and decided to step down at that time. At the beginning of the fourth republic, France was confronted with various problems, one of which was a rebellion in Algeria. At that time, Algeria was a French colony which was regulated as a *département* in metropolitan France. When there was French military overthrow in Algeria in 1958, Charles de Gaulle finally used this moment to appear before the public as a figure of a new leader who was clean and pro-people. Thus, on May 28<sup>th</sup>, 1958 a demonstration broke out in France which demanded Charles de Gaulle to save France

The majority of Algerians then chose to be independent from France stated in a referendum on 1 July 1962 after long outbreaks of local resistance, the annexation of customary lands in the 1870s, the involvement of Algerians as a war effort in World War II, the massacre in Setif province in 1946 and the guerrilla independence since 1954. Four days later, President de Gaulle declared Algeria independent.

Charles de Gaulle, through his speech, conveyed his thoughts on separating power between the executive and the legislature, improving the parliamentary system, and strengthening the executive power of the President. These points became the start of the new republic namely

the Republic V of France. On 1 June 1958, Charles de Gaulle was appointed as *President du Conseil* by *Assemblée Nationale*. He proposed a new constitution on September 4, 1958 which was approved by 79.25% of French people through a referendum on September 28, 1958.

The fundamental difference of the constitutions of Fourth Republic from the Fifth Republic is the existence of greater executive power than the legislative power. Such arrangement aimed to avoid the dominance of legislative power which had contributed to unstable country during the period of the Fourth Republic which experienced cabinet changes for 22 times in the period of 12 years (18 December 1946 - 22 January 1958).

The presence of the French Republic V was also marked by a direct presidential election system that was first proposed by Charles de Gaulle in 1962. It aimed to provide a chance in which the President could be directly elected by the people without having to deal with political parties. This was the beginning of the separation of powers between the President as head of state and parliament. The renewal of the constitution of French Fifth Republic was also the beginning of a new system of government. France which previously adopted a parliamentary system of government then changed to a mixed government system.

Based on this description, the purpose of this article is to elaborate the division of executive power between *President de la République* and *Premier Ministre* in France based on the Constitution of the Fifth Republic considering that both are holders of executive power even though the prime minister must be in line with parliament.

## **RESEARCH METHODOLOGY**

This research is a qualitative research that applies a historical approach or historical research. According to Borg and Gall, historical research is a systematic investigation of documents and other sources that contain facts about the questions of historians in the past. Historical research seeks to reconstruct past facts about what, who, when, where and how objectively, systematically and accurately carried out at the present time. The reconstruction process is based on the results of field notes, artefacts, and verbal reports of historical actors or witnesses.

According to Kuntowijoyo, history and sociology are a unity when it comes to analysing a society. History has a privilege in the temporal aspect so that it is able to see the development of a society. Meanwhile, sociology has a depth characteristic in social analysis so that it can be used as a tool for analysing the phenomena that occur in the community. It fits the context of this research, for it is limited by the temporal aspect or time limitation, starting from the ratification of the Constitution of the Fifth Republic until the amendment in 2000. Furthermore, spatial aspects are all events in France as well as their thematic aspects, namely the focus on the political field, especially the government system.

## **LITERATURE REVIEW**

If the government in a country is led by a president who is assisted by his deputy, the country follows a presidential government system. The elected president from the process of general election becomes the head of the executive body and has the right to form his cabinet. Through this system, the executive branch is directly responsible to the president and is not responsible to the legislative or parliamentary body. This is different from the parliamentary government system in which the parliament has the authority to form its cabinet so that the cabinet is responsible to the parliament. The parliamentary government system itself is led by the Prime Minister while the President or King is only a symbol of the head of state. There is also a country that combines these two systems of government into a mixed system of government. A country that adopts a mixed government system is led by an elected President who has the highest power but he is coupled with a Prime Minister who has the power to form his cabinet, usually from the party that won the most votes during the legislative elections. In a mixed government system, the President can overthrow the parliament. Although the parliament cannot overthrow the President, the parliament can overthrow the government cabinet.

Based on 2002 data, in the midst of the rise of Western European countries with a presidential system of government, France is one of four countries implementing a mixed system of government. Other countries that adopt a similar system are Portugal, Finland and Switzerland.

France, as mentioned earlier, adopts a mixed government system in which there is a division of power between the executive and the legislative institutions. This system aims to improve the parliamentary system, separate legislative power from executive power, and provide greater power to executive institutions. The legislative authorities are members of the *Assemblée Nationale* and *Sénat* while the executive rulers are the *President de la République* (hereinafter referred to as the President) and *Premier Ministre* (hereinafter referred to as the Prime Minister).

The President and Prime Minister who are the executive authorities both have the obligation to lead the country. The role of the President and Prime Minister may seem similar but not the same. The two leaders have different powers. The mechanism of power sharing between the President and the Prime Minister has been stipulated in the Constitution of the Fifth Republic of which several articles have been amended until 2000.

## **RESULT AND DISCUSSION**

Mechanism for Power Distribution between President and Prime Minister based on The Constitution of the Fifth Republic

1. Election System and the Length of Service of the President and Prime Minister as well as the Implementation of the Referendum

The President, in the amended article 6 of the constitution of the Republic V on 6 November 6 1962, is directly elected by the French people. Through this condition, the President receives a direct mandate from all French people which causes the President to have greater legitimacy. In other words, the role of the President in the government system is greater than the Prime Minister.

The President has the authority to elect the Prime Minister. Based on article 8 of the Constitution of the Fifth Republic, the President has the right to elect and appoint the Prime Minister and terminate him/her if the concerned person declares a resignation from the government. However, the President appoints the Prime Minister on the proposal given by the parliament. Therefore, the political flow of the majority in the parliament really determines the elected Prime Minister. The President does not have the authority to remove the Prime Minister (without a statement for the resignation) because it is the authority of the *Assemblée Nationale* (hereinafter referred to as the National Council) as the parliament.

The length of service for the French President is seven years, while the National Council MPs have five-year term. The unequal term of office causes cohabitation or the situation when the President and members of parliament come from two different political streams and must work together to run the government.

The irregularities of political cohabitation which had happened three times in France caused the President to decide to cut his length of service through the implementation of a referendum which sought the opinion of the French people regarding the term cuts. Based on article 11 after the amendment, the President can make a referendum. During the process of drafting and implementing a referendum, the Prime Minister has the authority to participate in the process.

After the referendum was held and received a positive response from the French people, article 6 of the constitution of the Republic of V was amended. Before the amendment, article 6 of the constitution of the Republic V had stated the President's tenure was seven years. In 2000 (after the referendum), article 6 of the Constitution of the Fifth Republic was amended. Based on the amended article 6 of the Constitution of the Fifth Republic, the length of service of the French President becomes five years starting in the 2002 general elections.

The implementation of the referendum itself has been regulated in article 11 of the Constitution of the Fifth Republic after the amendment. The President, with the proposal of the government, can submit a referendum on the Draft Law related to public authority organizations, reforms related to the nation's social or economic policies, additional contributions to public services or ratification of treaty authorities, without conflicting with the constitution and having an impact on the social system of the institution. During the referendum, it is the President who has the authority in organizing it. Regarding this matter, the Prime Minister only has authority to give proposals or suggestions to the President in preparing a referendum. Then the President has the authority to announce the Law after the announcement of the results of the consultation.

2. Duties and Authorities of the President and Prime Minister towards Parliament and the Council of Ministers

Based on article 6 of the Constitution of the Fifth Republic, the President has the duty to oversee the functioning of the constitution, safeguard state sovereignty, and guarantee the integrity of the state. Based on article 21 of the Constitution of the Fifth Republic, the elected Prime Minister should carry out his/her role as the head of government. The Prime Minister while carrying out his/her duties is assisted by the cabinet or the Council of Ministers. Nevertheless, it is the President who has the authority to determine the composition of the members of the Council of Ministers. This matter has been regulated in the process of preparing the cabinet based on Article 8 of the Constitution of the Fifth Republic. However, the Prime Minister has the right to submit the name of a candidate to become a cabinet member to the President who has the authority to approve the proposal. After the proposal is approved, the President has the duty to approve and appoint the elected Cabinet Council. Under Article 8 of the Constitution of the Fifth Republic, the President has the authority to dismiss the Council of Ministers from his position. Under article 9 of the Constitution of the Fifth Republic, the President is authorised to lead the Cabinet Council that has been formed. The President is assisted by the Prime Minister to maintain his/her leadership role. In accordance with article 21 of the Constitution of the Fifth Republic, the Prime Minister has the right to submit his duties to the concerned Minister.

Under article 21 of the Constitution of the Fifth Republic, the Prime Minister as head of government has the obligation to control government policy. In this case, the Prime Minister has full power to determine the direction of national policy that has been regulated in article 20 of the 1958 Constitution. The Prime Minister is also responsible for ensuring implementation of regulation and law. In fact, the Prime Minister has the power to replace the President's role in exceptional circumstances until the specified time as stated in Article 21 of the Constitution of the Republic V.

The Prime Minister as head of government is of course responsible to the parliament. The matter is regulated in article 20 of the Constitution of the Fifth Republic of which procedures and conditions are discussed in articles 49 and 50 of the Constitution of the Fifth Republic. If the Prime Minister is deemed incapable of carrying out his/her duties, the National Council has the authority to remove the Prime Minister from his/her position, meaning that the parliament has the right to remove the Prime Minister. However, this does not apply to the President. The President cannot be overthrown by the National Council. On the contrary, in accordance with article 12 of the Constitution of the Fifth Republic, the President can overthrow the National Council.

The termination of the National Council shall be carried out by the President by holding meetings and consultations with the Prime Minister, the chairman of the National Council and the Chair of the Senate. These series and consultations should be conducted before the President can announce the dismissal of the National Council. However, the authority does not work when the country is in the state of an emergency. During emergency, in order to avoid any absolute leadership because the President has the highest position in the country, the President has no right

to overthrow the National Council and change the constitution

### 3. Formation of Law

Regarding the Bill, based on article 21 of the Constitution of the Fifth Republic, the Prime Minister has the right to submit the Bill to the President. Then, based on articles 10 and 18 of the Constitution of the Fifth Republic, the Bill must be reviewed by the President for later consideration. If the bill is approved, the bill is then administered by the National Council before it is passed by the President. The Bill that has been passed must be implemented by the Prime Minister. In short, the applied law is a Bill from the Prime Minister which is approved by the President and then implemented by the Prime Minister.

If the President does not approve the Bill from the Prime Minister, the Bill can be submitted directly to parliament. If the majority of the parliament approves the Bill, the President must approve the Bill to be applied Law because the President is authorised to ratify the Bill. The President is also authorised to sign regulations and decrees from the Council of Ministers' deliberations. That is regulated in article 13 of the constitution of the Republic V.

### 4. Military

As already stated, based on article 6 of the Constitution of the Fifth Republic, the President is responsible for maintaining the sovereignty of the people and guaranteeing the integrity of the country. Regarding the issue of national integrity and resilience, based on article 15 of the Constitution of the Fifth Republic, the President is the commander of the armed forces (supreme commander of the military). However, that does not mean the President must master the military field. Article 16 of the Constitution of the Fifth Republic states that within an institution of a republic, when the integrity of the state is being threatened, the President can declare that the state of emergency. If necessary, the President can declare war. However, before making this decision, the President is required to conduct meetings and consultations with the Prime Minister, the chair of the National Council, and the Institutional Council.

As noted earlier, in the state of emergency, the President loses his/her authority to dismiss the National Council and change the institution to prevent the President's absolute power, for the President has the highest position of the state by leading the executive and legislative bodies. If the condition of the country is threatened, the Prime Minister will be needed in making decisions.

### 5. Foreign Affairs

Regarding foreign affairs, the President has greater authority than the Prime Minister. Based on the constitution, this matter is one of the tasks of the President. In accordance with article 14 of the Constitution of the Fifth Republic, the President has the authority to appoint ambassadors who are placed in a designated country. The president is also authorised to elect diplomats who



are then sent to resolve foreign policy issues. Then, the envoys or diplomats must provide a report directly to the President. The President also functions as a symbol of formality in welcoming or receiving ambassadors of the country or foreign Heads of State.

If France makes an agreement with a foreign country, the President has the authority to sign the agreement on behalf of the people of France. The matter is regulated in article 52 of the constitution of the Republic of V. In short, the President is the head of state whose duty is to represent the French people both for domestic affairs and foreign affairs. The Prime Minister, in this regard, does not have great authority in interfering in foreign matters.

#### 6. Indonesian Government System

Indonesia is a sovereign country that has a legal foundation in favour of the sovereignty of the people. The legal foundation is the 1945 Constitution which is the highest legal ground of the state. It also becomes a reference to the derivative laws. The principle of popular sovereignty then becomes known as the principle of democracy, in which the people occupy the highest position of power in a country. In addition to the 1945 Constitution, Indonesia also has *Pancasila* as the foundation of the State; thus, Indonesia is called the democratic state of *Pancasila*. According to Mahfud MD, former chairman of the Supreme Court who is also an expert in Indonesian constitutional law, there are characteristics of a country with a presidential system, namely the Head of State becomes the Head of Government; the Government is not responsible to the Parliament (House of Representatives); ministers are appointed and are responsible to the president, executive and legislature are equally strong (Noviati, 2013, p. 338).

#### 7. Comparison of Indonesian and French Government Systems

Unlike the Indonesian case, the President of France is only the head of state – not the head of government – although he/she is elected by the people and is directly responsible to the people. Similar to France, the President of the Republic of Indonesia is directly elected by the people. This is stated in the 1945 Constitution on the general election of legislative members and the President along with his/her deputies of which the procedures have been regulated in Law of the Republic of Indonesia Number 7 of 2007 on General Elections.

The French state which adopts a mixed government system has a Prime Minister in charge of running the government and is assisted by ministers. Meanwhile, in Indonesia, this task is borne only by the President. Based on the 1945 Constitution, the work of the President is assisted by ministers who are elected by the President through his/her prerogative rights, and the procedure for determining his/her cabinet has been regulated in Law of the Republic of Indonesia Number 39 of 2008 on State Ministries.

Regarding the Bill, based on Article 20 of the 1945 Constitution, the Indonesian House of Representatives (DPR) as the Legislative Council of the Republic of Indonesia holds the power to form laws in which the Bill can be derived from the DPR, DPD (Regional House of

Representatives), and the President – in this case the President will usually be represented by the minister or head of the relevant institution. Similar to France, the Indonesian President has the duty to ratify a bill that has been mutually agreed; however, based on the DPR Charter Chapter VI, if within 30 days the President has not signed it, the bill will become law and must be enacted.

As noted earlier, the French President is the highest military commander. This is different from Indonesia of which Indonesian National Army (*Tentara Nasional Indonesia-TNI*) as the country's military forces are led by the TNI Commander or high-ranking military officer. However, the commander is appointed and dismissed by the President with the approval of the DPR. Similar to France, the President of the Republic of Indonesia has a position above the military forces (TNI) in terms of the deployment and use of military forces. This has been regulated in the Law of the Republic of Indonesia Number 34 of 2004 on the Indonesian National Army.

Regarding foreign affairs, as stipulated in the Law of the Republic of Indonesia Number 37 of 1999 on Foreign Affairs, similar to France, the President of the Republic of Indonesia has the authority to administer Foreign Affairs and the implementation of Foreign Policy. If the French President can declare war on a foreign country after obtaining approval from the Prime Minister and the National Council, the President of the Republic of Indonesia can also do so by declaring war through the approval of the House of Representatives.

## CONCLUSION

The French Constitution of the Fifth Republic has control in the implementation of the country. In the Constitution of the Fifth Republic, it is vividly explained the division of power between the legislative and executive bodies. The President and Prime Minister are the rulers of the state, and both have an ongoing task.

The president and prime minister are responsible for implementing the constitution. The Prime Minister is the President's choice based on the proposal of Parliament, so the Prime Minister is responsible to the Parliament and the President. Meanwhile, the President is directly elected by the people. It reflects how the President is directly responsible to the people. The President especially can communicate directly to the people through a referendum. Even though the Prime Minister has the right to give his/her proposal, but in the end the referendum will proceed based on the President's decision. This shows that the President occupies the highest position in the country.

The Prime Minister is responsible to the parliament, while the President is not responsible to the parliament. The Prime Minister can be overthrown by Parliament, and the President can dismiss the Parliament. From this illustration, it can be concluded that the position of Prime Minister is not higher than the position of President.

Even so, the President and Prime Minister are like a pair of dancers. They must have good cooperation to run a government and the State. The continuity between the two can be seen from the cabinet selection system of the Council of Ministers. The Council of Ministers whose job



is to assist the work of the Prime Minister is directly elected by the President based on the proposal of the Prime Minister.

The President also has a stronger position than the Prime Minister in terms of formulation of the Law because the President has the authority to give approval to the Bill. However, if the Bill made by the Prime Minister is not approved by the President, the Prime Minister can submit the Bill to the Parliament. If the major votes in the Parliament state that they agree with the Bill, the President must ratify the Law. Regarding this matter, the Prime Minister has the same power as the President.

The unification of the President and Prime Minister is needed if the State is experiencing an emergency situation, because at that time the President can hold legislative and executive power. However, the President loses his/her authority to dismiss the National Council and change the constitution. When an emergency situation occurs, the Prime Minister plays a major role by participating to make decisions together with the President.

Regarding foreign affairs, the President has the greatest authority. During the administration of Francois Mitterand and Jacques Chirac, indeed Jacques Chirac (Prime Minister) was given the power to interfere in foreign affairs. Nevertheless, it was based on the President's decision. This once again proves that the President remains a symbol of a country that has the number one position in France.

When compared with the government system in Indonesia which adopts a presidential system, the French state which implements a mixed government system has several similarities and differences with Indonesia. The similarity between the two can be seen in the Presidential elections in which the Presidents in both countries are directly elected by the people. Similarly, in terms of foreign affairs and the military, the President has great authority over foreign affairs and has the highest position in the country's military forces. Nevertheless, there are some very clear differences between the two, one of which is that Indonesia does not have a Prime Minister. Thus, Indonesia has only one head that functions as head of state as well as head of government whose work is assisted by ministers. The Indonesian president is not responsible to the parliament even though parliament can overthrow the president through a motion of no confidence. However, the parliament cannot do the same action which is different from France.

It can be concluded that the mechanism of power sharing between the President and the Prime Minister regulated in the Constitution of the Fifth Republic shows that the President has more power than the Prime Minister. However, the President needs the Prime Minister to make important decisions for the country. The Prime Minister also assists the President while leading the cabinet and running the government. The Prime Minister is needed to set a limit on the absolute power of the President as Head of State. It is different from the Indonesian case, in which the positions of Head of State and Head of Government are held by the President whose work is assisted by ministers.

## REFERENCES

- Marihandono, Djoko. (2003). *Prancis dan Kita; Belajar dari Sistem Pemerintahan dan Pemilihan Presiden di Prancis*. Penerbit Wedatama Widya Sastra
- Riska Elvriza. (2001). *Saling akomodasi antara Francois Mitterand dan Jacques Chirac pada Pembentukan Kabinet dan Penentuan Kebijakan (1986-1988)*. Universitas Indonesia.
- Colorado.edu. (2010). Presidential versus Parliementary Government.  
[http://www.colorado.edu/ibs/eb/alston/psci4028/fall\\_2010/Presidential%20versus%20Parliamentary%20Government%20by%20Carey.pdf](http://www.colorado.edu/ibs/eb/alston/psci4028/fall_2010/Presidential%20versus%20Parliamentary%20Government%20by%20Carey.pdf)
- Noviati, Cora Elly. (2013). “Demokrasi dan Sistem Pemerintahan”.  
<https://media.neliti.com/media/publications/108628-ID-demokrasi-dan-sistem-pemerintahan.pdf>
- République Française. Le Service Public de La Diffusion du Droit. *Journal Officiel de la Republique Francaise; Constitution 5 Octobre 1958*. Octobre 1958. 27 December 2012.  
legifrance.gouv.fr. 2014.  
<[http://www.legifrance.gouv.fr/jopdf/common/jo\\_pdf.jsp?numJO=0&dateJO=19581005&pageDebut=09151&pageFin=null&pageCourante=09154](http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=19581005&pageDebut=09151&pageFin=null&pageCourante=09154)>.
- République Française. “Election Resources on The Internet. Presidential and Legislative Election in France” *Historical Background*. by Manuel Álvarez-Rivera. May 2014. 22 August 2015.  
<http://www.electionresources.org/fr/#BACKGROUND>>.
- Kuntowijoyo. (2003). *Metodologi Sejarah*, Yogyakarta: PT. Tiara Wacana Yogya.
- Tirto.id. pengaruh kemerdekaan Aljazair ke seluruh dunia, Accessed. 12 October 2018.  
<https://tirto.id/pengaruh-kemerdekaan-aljazair-ke-seluruh-dunia-crQN>
- Borg & Gall. (2003). *Education Research*. New York: Allyn and Bacon.